

ENTERED

April 10, 2018

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FLOYD EARL SHERWOOD,

Plaintiff,

v.

BRAZOS COUNTY DETENTION CENTER, *et al.*

Defendants.

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CIVIL ACTION NO. H-18-1015

ORDER OF PARTIAL DISMISSAL

Plaintiff, a pretrial detainee in custody of the Brazos County Detention Center (the “Detention Center”), filed this section 1983 lawsuit against the Detention Center and the Brazos County District Attorney’s Office (the “District Attorney”). Plaintiff complains that he received improper medical care at the Detention Center, and that the District Attorney is pursuing malicious and wrongful criminal charges against him. He seeks leave to proceed *in forma pauperis* and requests monetary damages.

Under 28 U.S.C. § 1915(e)(2)(B), a district court must *sua sponte* dismiss an *in forma pauperis* section 1983 complaint if the complaint is malicious or frivolous, fails to state a claim upon which relief can be granted, or seeks monetary damages from a defendant who is immune from suit.


Plaintiff’s claims against the District Attorney for malicious and wrongful prosecution must be dismissed, as he seeks monetary damages from a defendant who is immune from suit. Prosecutors are entitled to absolute immunity for their acts performed

as advocates of the State. “Prosecutorial immunity applies to the prosecutor’s actions in initiating the prosecution and in carrying the case through the judicial process.” *Boyd v. Biggers*, 31 F.3d 279, 285 (5th Cir. 1994). “Absolute immunity shelters prosecutors even when they act maliciously, wantonly or negligently.” *Rykers v. Alford*, 832 F.2d 895, 897 (5th Cir. 1987). Plaintiff’s claims against the prosecutors in his case fall squarely within the purview of prosecutorial immunity, and the claims fail to raise issues of constitutional dimension.

Plaintiff’s claims against the Brazos County District Attorney’s Office are DISMISSED WITH PREJUDICE as barred by prosecutorial immunity.

This is an INTERLOCUTORY ORDER.

Signed at Houston, Texas on April 10, 2018.



Gray H. Miller
United States District Judge